



**Office of the Washington State Auditor**  
**Pat McCarthy**

# **Whistleblower Investigation Report**

## **Department of Corrections**

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**Report No. 1025882**





**Office of the Washington State Auditor  
Pat McCarthy**

March 12, 2020

Stephen Sinclair, Secretary  
Department of Corrections

**Report on Whistleblower Investigation**

Attached is the official report on Whistleblower Case No. WB 20-004 at the Department of Corrections.

The State Auditor's Office received an assertion of improper governmental activity at the Agency. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the results of our investigation.

If you are a member of the media and have questions about this report, please contact Director of Communications Kathleen Cooper at (564) 999-0800. Otherwise, please contact Assistant Director of State Audit Troy Niemeyer at (564) 999-0917.

Sincerely,

A handwritten signature in cursive script that reads "Pat McCarthy".

Pat McCarthy  
State Auditor  
Olympia, WA

cc: Governor Jay Inslee  
Jeannie Miller, Assistant Secretary  
Kate Reynolds, Executive Director, Executive Ethics Board  
Cristopher de la Peña, Investigator

## WHISTLEBLOWER INVESTIGATION REPORT

### Assertion and Results

Our Office received a complaint that a Department of Corrections (agency) employee (subject) spends excessive time using her work computer for personal research, studying, and other matters that are non-work-related.

We found reasonable cause to believe an improper governmental action occurred.

### About the Investigation

We reviewed the subject's emails, internet history from January 2, 2019 through August 14, 2019, and a forensic image of the subject's computer hard drive.

We found a total of 2,887 minutes, or 48.1 hours, of internet activity that we considered to be non-work-related. There were 350 separate instances of non-work-related internet activity, with 87 instances lasting for longer than 10 minutes. The longest single instance of non-work-related activity was 64 minutes.

We identified 686 minutes, or 11.4 hours, of internet activity related to the subject's studying for the LSATs and applying for law school. We found two documents on the subject's hard drive related to the subject's law school application, a law school resume and personal statement. These two documents were attached to emails sent from the subject's state email address to a personal email address suggesting the subject wrote and/or edited these documents using her state issued computer during work hours.

We identified 780 minutes, or 13 hours, of internet activity related to travel. A document found on the subject's hard drive listed costs for a trip from Seattle to London, Paris and Reykjavik.

We identified 83 minutes, or 1.4 hours, of internet activity related to the subject seeking employment with non-state-government agencies.

The remaining 1,338 minutes, or 22.3 hours, of non-work-related internet activity involved various retail, entertainment, and banking websites.

During an interview, the subject acknowledged her personal use of state resources. The subject said she worked on her law school resume and personal statement using her state-issued computer during work hours. She said she studied for her LSATs during her downtime. The subject said her supervisor was aware that she was studying but did not give her permission to use her state-issued computer to study. The subject said she understood her use of state resources could not be considered de minimis.

A state rule (WAC 292-110-010) allows for the de minimis use of state resources as long as certain conditions are met. Among those conditions are that the use is brief and infrequent and not in

furtherance of private employment. The subject's use of the internet for non-work-related activity was neither brief nor infrequent and any searching for non-Washington state government employment cannot be considered de minimis. Therefore there is reasonable cause to believe an improper governmental action occurred.

### **Agency's Plan of Resolution**

*Thank you for the opportunity to review and respond to the State Auditor's Office (SAO) report on Whistleblower Case No. 20-004. The Department of Corrections takes assertions seriously and appreciates the assistance of the SAO in developing important facts during the investigation.*

*The Department has initiated an administrative investigation into the matter. Upon completion of this investigation and in accordance with the Collective Bargaining Agreement between the State of Washington and the Washington Federation of State Employees Article 27 – DISCIPLINE, the Department will afford the employee an opportunity to respond to the Auditor's report, as well as to any additional investigation results. The Department will notify the State Auditor of the outcome of its review and resulting actions.*

### **State Auditor's Office Concluding Remarks**

We thank Agency officials and personnel for their assistance and cooperation during the investigation.

## WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

### **RCW 42.52.160(1) - Use of persons, money, or property for private gain.**

- (1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

### **WAC 292-110-010(1) and (3) - Use of state resources.**

- (1) Statement of principles. All state employees and officers are responsible for the proper use of state resources, including funds, facilities, tools, property, and their time. This section does not restrict the use of state resources as described in subsections (2) and (3) of this section.

- (3) Permitted personal use of state resources. This subsection applies to any use of state resources not included in subsection (2) of this section.

(a) A state officer or employee's use of state resources is de minimis only if each of the following conditions are met:

- (i) There is little or no cost to the state;
- (ii) Any use is brief;
- (iii) Any use occurs infrequently;
- (iv) The use does not interfere with the performance of any state officer's or employee's official duties;
- (v) The use does not compromise the security or integrity of state property, information systems, or software;
- (vi) The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain; and
- (vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.